



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1995

Mr. G. Mike Davis  
State Fire Marshal  
Texas Commission on Fire Protection  
P.O. Box 2286  
Austin, Texas 78768-2286

OR95-791

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32467.

The Texas Commission on Fire Protection (the "commission") received a request for a copy of the fire report in investigation file TCFP# 957-049-01. You contend that except for the front page of the report, the requested information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 provides that:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information which relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of offense reports, however,

is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public).

You state that the investigation is currently active. Although you say you have released the first page of the report pursuant to the *Houston Chronicle Publishing Co.* case, this does not satisfy the commission's burden under *Houston Chronicle Publishing Co.* It is the type of information that is determinative, not the placement of the information in an offense report. See Open Records Decision No. 127 (1976) at 9 (listing type of information available in fire investigation report); see also Open Records Decision No. 371 (1983). Therefore, you must release the information that is listed in Open Records Decision Nos. 371 (1983) and 127 (1976) as public information. See Open Records Letter No. 95-270 (1995).

In determining what information must be released to the requestor, you may rely on the marked documents that were the subject of Open Records Letter No. 95-642 (1995), a "previous determination" issued to the commission by this office regarding the public availability of information relating to its active investigations.<sup>1</sup> If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

KHG/LBC/rho

Ref: ID# 32467

Enclosures: Submitted documents

cc: Ms. Brenda Basey Scott  
1905 Normal Park Dr., #106  
Huntsville, Texas 77340  
(w/o enclosures)

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<sup>1</sup>Please note that Open Records Letter No. 95-642 (1995) and this ruling only address the availability of information relating to an active investigation. Once the investigation is closed, if the commission wishes to withhold any of this information, it must once again request a ruling from this office pursuant to section 552.301 of the Government Code.